IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9615 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIMESH ALIAS NAIMISH DANABHAI VALA

Versus

STATE OF GUJARAT

Appearance:

MR PRADEEP PATEL for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner challenges the order of preventive detention dated 20th November, 1999, made against him by

the Commissioner of Police, Rajkot City, under the powers conferred upon him under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

Upon perusal of the grounds of detention, it appears that two offences punishable under Chapters XVI and XVII of the IPC have been registered against the petitioner. The petitioner and his accomplices are alleged to have resorted to extortion and are also alleged to have used lethal weapons. Besides, two witnesses have given statements in respect of the incidents of 25th July, 1999 and 12th September, 1999. Both the witnesses, whose identity has not been disclosed, are alleged to have suffered at the hands of the petitioner and his accomplices. On account of those incidents, the public tranquility and the even tempo of life in the area is alleged to have been disturbed. The petitioner is, therefore, held to be a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are found to be prejudicial to the maintenance of public order. Besides, the Detaining Authority has also referred to the previous criminal history of the petitioner to the effect that he and his accomplices are indulging into activities of extortion and carrying lethal weapons with them and intimidate the innocent people. It is however specifically observed that those past activities have not been taken into consideration for the purpose of the impugned action.

It is contended that undoubtedly the Detaining Authority is influenced by the alleged past criminal activities of the petitioner, and thereby the Detaining Authority has not only relied upon the relevant material, but is also influenced by some extraneous material. The order of detention, therefore, should stand vitiated. In support of this argument, Mr. Patel has relied upon the Division Bench judgment of this court in the matter of BAIJLO @ BAIJU KANDU KESHRI VS. THE POLICE COMMISSIONER, RAJKOT & ORS. (Special Criminal Application No. 1705/92, decided on 6th August, 1993, by the Bench comprising of Hon'ble Mr. Justice S.D.Shah & Mr. Justice R.D.Vyas). In the said matter, the Detaining Authority had referred to the past criminal history of the detenu. However, it was stated that while passing the order of detention, those past activities were not borne in mind. In the said circumstances, the court held that - " We are of the opinion that a detailed reference to the past activity of the detenu by giving various C.Rs. No. and offences for which the detenu was tried so as to draw the attention of the detenu to such

activity, the Detaining Authority has permitted itself to be influenced by factors which were not relevant and germane to the exercise of power. By permitting such irrelevant factors to enterinto consideration and by making reference to all such incidents and also by inviting attention of the detenu to all such incidents, in our opinion, the Detaining Authority has, in substance, misdirected itself in law thereby vitiating its subjective satisfaction. On this ground alone, the order of detention shall have to be quashed and set aside and is hereby quashed and set aside. However, we do not lay down as a broad proposition of law that a mere reference to past activity simply would also vitiate the order of detention. In the present case, had that been the position, we would have no hesitation in rejecting the submission of the learned counsel for the detenu. However, the Detaining Authority has gone a step further and has, by giving details of the past activity, invited attention of the detenu to such past activity and has thereafter proceeded to observe that it has not based the order on past activity of the detenu. The approach of the Detaining Authority in para 7 of the grounds of detention is inconsistent and is not convincing. "

The principles squarely apply to the facts of the present case also. Undoubtedly, though the Detaining Authority has categorically mentioned that the past activities of the petitioner were not made the basis for the order of detention, the same has influenced the subjective satisfaction of the Detaining Authority. The subjective satisfaction recorded by the Detaining Authority is hence vitiated. The impugned order, therefore, requires to be quashed and set aside on this ground alone. In that view of the matter, other contentions raised by Mr. Patel need not be dealt with.

In view of the above discussion, the petition is allowed. The impugned order dated 20th November, 1999, is quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

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JOSHI